UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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ART UNIT	PAPER NUMBER
3689	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/797,502	KIRCHHOFF ET AL.
	Examiner	Art Unit	
	HEIDI RIVIERE	3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>12 September 2008</u>.

2a)☒ This action is **FINAL.**　　　　2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-19,21-36 and 39-53</u> is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-19,21-36 and 39-53</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some *　c)☐ None of:

　　　　1.☐ Certified copies of the priority documents have been received.

　　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
　　　　　　application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail. Date _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to **claims 1-53** have been considered however they are not persuasive. Examiner used **Mault et al. (US 2002/0133378 A1)** (hereinafter **"Mault"**) in view of **Grana (US 2006/0053184 A1)** and **Nanci Hellmich**, "Thinning Out The Diet Myths" USA Today, Jan. 3, 2001 (hereinafter "**Hellmich**") to reject the claims. Applicant incorrectly argues that Mault is "directed to software entirely contained on a handheld device to log resting metabolic rate" which includes the entering food consumption through a food log. On pages 4, 9 and 10 of the specification, Applicant claims a weight control software. On pages 17 and 18 of the specification, Applicant claims the system always for the inclusion of list of meals and meal planner and journal. Applicant also argues that Grana does not allow for altering the meal information. However, in light of the rejection based on 35 USC 103 Mault in view of Grana allows entry of meal information at anytime based on the disclosure of Mault. Furthermore, Applicant argues that "one skilled in the art would not find it obvious to combine software adaptable to run a portable computing device facilitating calculation of resting metabolic rate with a large database server". Applicant discloses the Mault reference in the Informational Disclosure Statement filed on 20 August 2004. As a result, the rejections have not been withdrawn.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3.   **Claims 1-19, 21-36, 39-43, 45-47, and 49-53** are rejected under 35

U.S.C. 103(a) as being unpatentable over **Mault** in view of **Grana (US**

2006/0053184 A1).

4.   **With respect to claims 1 and 17: (Currently Amended)** Mault teaches:

- a user computer; (paragraphs 41, 42 and 56 – preferred embodiment is a
  computing device)

- a weight control program computer in communication with the user
  computer over a network; (paragraphs 41, 42 and 56 – preferred
  embodiment is a computing device)

- a foods database accessible by the weight control program computer;
  (Figs 5A and 5B; paragraph 51 – food entry options in database is
  accessible via computing device)

- the foods database having stored thereon data relating to a plurality of
  foods; (Figs 5A and 5B; paragraph 51 – food entry options in database is
  accessible via computing device)

- said weight control program computer stores a software program having
  instructions causing the weight control program computer to receive data

relating to foods from the person via the user computer and to alter the foods database based upon the received data. (Figs 5A and 5B; paragraphs 43 and 51 – food entry options in database is accessible via computing device)

Mault does not teach however, Grana teaches:

- said weight control program computer stores a software program having instructions causing the weight control program to generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer; (paragraphs 31 and 38– menu/recipe database; daily menu screen allows changes in meal plan)

- software executing on the weight control program computer operable to generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer, the meal plan being based at least in part on the target food consumption value. (Grana: paragraphs 27 and 35 – use of software; weekly list of meals provided)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault and Grana. Mault teaches a system and method for integrated caloric management. The client enters/logs what they have eaten for the day or week into the system and it in turn calculates

their caloric in take as well as other information pertinent to weight management. A software program is used. Grana allows the system to generate a meal plan for the client using recipes and menu information stored in a tailored menu/recipe and nutritional databases. The database includes prestored information on food and presents menus. It would have been obvious to combine Mault and Grana because it would be easier for someone monitoring their diet and learning new habits to have menu suggestions from a weight management program.

5.   **With respect to claims 2 and 39:** Mault discloses software executing on the weight control program computer operable to search the foods database to locate and transmit to the user computer data relating to foods stored on the foods database which match criteria received from the user computer. (Figs 5A and 5B; paragraph 51 – food entry options in database is accessible via computing device)

6.   **With respect to claims 3, 18 and 40:** Mault discloses the food selections received from the user computer are based upon the data relating to foods transmitted by the software. (Figs 5A and 5B; paragraph 51 – food entry options in database is accessible via computing device)

7.   **With respect to claims 4 and 41:** Mault teaches at least some of the data stored on the foods database relates to branded foods. (Fig. 20B, item 266 – notes the Hormell Sausage can be used in recipe)

8.   **With respect to claims 5, 19 and 42:** Mault discloses the limitations in the rejections cited above. Mault does not disclose at least some of the data stored on the foods database relates to foods prepared by consumer restaurants.

However, Grana teaches at least some of the data stored on the foods database relates to foods prepared by consumer restaurants. (paragraph 41 – "restaurants field permits a user to be presented with a list of meals available at various restaurants"; replacements or alternatives suggested)

Therefore, it would have be obvious to one of ordinary skill in the art at the time of the invention to include food prepared in restaurants to the foods database because this enables user "to maintain their planned diets in every venue." (Grana paragraph 41)

9.   **With respect to claims 6, 30 and 34:** Mault teaches the meal plan is based at least in part on a target food consumption value maintained by software executing on the weight control program computer. (Figs. 3H-3L, 6A and 6B, 7A - 7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

10.   **With respect to claims 7 and 22:** Mault teaches software executing on the weight control program computer operable to alter the target food consumption value based upon activity selections received from the user computer. (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

11.   **With respect to claims 8 and 23:** Mault teaches:

- an activities database accessible by the weight control program computer, the activities database having stored thereon data relating to a plurality of activities; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

- software executing on the weight control program computer operable to
  search the activities database to locate and transmit to the user computer
  data, relating to activities stored on the activities database which match
  criteria received from the user computer; (Fig. 6A and 6B; paragraph 52 –
  exercise database lists types of activities) and

- wherein the activity selections received from the user computer are based
  upon the data relating to activities transmitted by the software. (Fig. 6A
  and 6B; paragraph 52 – exercise database lists types of activities)

12.   **With respect to claims 9, 24 and 33:** Mault teaches software executing
on the weight control program computer operable to receive data relating to
activities from the person via the user computer and to alter the activities
database based upon the received data. (Figs. 3H-3L, 6A and 6B, 7A -7B and
8A-8D; paragraphs 52-54 – weight of individual calculated; target food
consumption calculated; activity selections automatically calculated into balance
reports)

13.   **With respect to claims 10 and 25:** Mault teaches the target food
consumption value is generated automatically by software executing on the
weight control program computer. (Figs. 2B; 3H-3L, 6A and 6B, 7A -7B and 8A-
8D; paragraphs 45, 52-54 – target food consumption calculated; activity
selections automatically calculated into balance reports)

14.   **With respect to claims 11, 26 and 35:** Mault teaches the target food
consumption value is based at least in part on an initial weight of the person.
(Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 45, 52-54 – weight of

individual calculated; target food consumption calculated; activity selections automatically calculated into balance reports)

15.   **With respect to claims 12, 27 and 36:** Mault teaches the target food consumption value is based at least in part on a current weight of the person. (Figs. 3H-3L, 6A and 6B, 7A and 7B and 8A-8D; paragraphs 45, 52-54 – weight of individual calculated; target food consumption calculated; activity selections automatically calculated into balance reports)

16.   **With respect to claim 13, 28 and 43:** Mault teaches a favorites database accessible by the weight control program computer, the favorites database having stored thereon data relating to foods which are favorites of the person. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

17.   **With respect to claim 14 and 29:** Mault teaches the foods which are favorites of the person are specified by the person. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

18.   **With respect to claim 15 and 21:** Mault teaches the foods which are favorites of the person are determined automatically by software executing on the weight control program computer. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

19.   **With respect to claims 16, 31, 46 and 53:** Mault discloses the limitations in the rejections cited above. Mault does not disclose wherein the network comprises the Internet. However, Grana teaches wherein the network comprises

the Internet. (paragraph 23 – server is world wide web server connected to Internet)

Therefore, it would have be obvious to one of ordinary skill in the art at the time of the invention to have in Internet as part of the network because this would enable the user to have access to the system at home and at work.

20.   **With respect to claim 20: (Cancelled)**

21.   **With respect to claim 32: (Currently Amended)** Mault discloses

- a user computer; (paragraphs 41, 42 and 56 – preferred embodiment is a computing device)

- said weight control program computer stores a software program having instructions causing the weight control program computer to maintain a target food consumption value; (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – target food consumption calculated)

- an activities database accessible by the weight control program computer, the activities database having stored thereon data relating to a plurality of activities; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

- said weight control program computer stores a software program having instructions causing the weight control program computer to search the activities database to locate and transmit to the user computer data relating to activities stored on the activities database

which match criteria received from the user computer; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

- said weight control program computer stores a software program having instructions causing the weight control program computer to alter the target food consumption value based upon activity selections received from the user computer, which activity Selections received from the user computer are based upon the data relating to activities transmitted by the software. (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

Mault does not disclose, however Grana teaches:

- a weight control program computer in communication with the user computer over a network; (paragraphs 23 – server is a computer connected to Internet "user uses a client machine")

- a foods database accessible by the weight control programs computer, the foods database having stored thereon data relating to a plurality of foods; (paragraphs 31 and 36 – nutritional database) and

- said weight control program computer stores a software program having instructions causing the weight control program computer to generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer to allow

the person to alter the meal plan based upon food selections received from the user computer, the meal plan being based at least in part on the target food consumption value. (paragraphs 31 and 38– menu/recipe database; daily menu screen allows changes in meal plan)

- software executing on the weight control program computer operable to generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer, the meal plan being based at least in part on the target food consumption value. (Grana: paragraphs 27 and 35 – use of software; weekly list of meals provided)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault and Grana. Mault teaches a system and method for integrated caloric management. The client enters/logs what they have eaten for the day or week into the system and it in turn calculates their caloric in take as well as other information pertinent to weight management. A software program is used. Grana allows the system to generate a meal plan for the client using recipes and menu information stored in a tailored menu/recipe and nutritional databases. The database includes prestored information on food and presents menus. It would have been obvious to combine Mault and Grana

because it would be easier for someone monitoring their diet and learning new

habits to have menu suggestions from a weight management program.

22.   **With respect to claims 37-38: (Cancelled)**:

23.   **With respect to claim 45:** Mault discloses the activities which are

favorites of the person are determined automatically by software executing on

the weight control program computer. (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-

8D; paragraphs 52-54 – target food consumption calculated; activity selections

automatically calculated into balance reports)

24.   **With respect to claim 47: (Currently Amended)** Mault teaches:

- a user computer; (paragraphs 41, 42 and 56 – preferred embodiment is a computing device)

- an activities database accessible by the weight control program computer, the activities database having stored thereon data relating to a plurality of activities; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

- said weight control program computer stores a software program having instructions causing the weight control program computer to maintain a target food consumption value and to allow the person to alter the target food consumption value based upon activity selections received from the person; (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

- a foods database accessible by the weight control program computer, the foods database having stored thereon data concerning a plurality of foods; (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

- a favorites database accessible by the weight control program computer, the favorites database having stored thereon data relating to foods and activities which are favorites of the person. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

Mault does not teach, however Grana discloses:

- a weight control program computer in communication with the user computer over a network; (paragraphs 23 – server is a computer connected to Internet "user uses a client machine")

- said weight control program computer stores a software program having instructions causing the weight control program computer to generate a meal plan comprised of foods stored on the foods database based at least in part on the target food consumption value, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer; (paragraphs 27, 38 and 35 – use of software; weekly list of meals provided) and

- software executing on the weight control program computer operable to generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer, the meal plan being based at least in part on the target food consumption value. (Grana: paragraphs 27 and 35 – use of software; weekly list of meals provided)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault and Grana. Mault teaches a system and method for integrated caloric management. The client enters/logs what they have eaten for the day or week into the system and it in turn calculates their caloric in take as well as other information pertinent to weight management. A software program is used. Grana allows the system to generate a meal plan for the client using recipes and menu information stored in a tailored menu/recipe and nutritional databases. The database includes prestored information on food and presents menus. It would have been obvious to combine Mault and Grana because it would be easier for someone monitoring their diet and learning new habits to have menu suggestions from a weight management program.

25.   **With respect to claim 49:** Mault teaches the foods and activities which are favorites of the person are determined automatically by software executing on the weight control program computer. (Figs. 3H-3L, 6A and 6B, 7A -7B and

8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

26. **With respect to claim 50:** Mault teaches software executing on the weight control program computer operable to search the favorites database to locate and transmit to the user computer data relating to foods and activities stored on the favorites database which match criteria received from the user computer. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

27. **With respect to claim 51:** Mault teaches software executing on the weight control program computer operable to alter the target food consumption value based upon activity selections received from the user computer, which activity selections received from the user computer are based upon the data relating to activities stored on the favorites database transmitted by the software. (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

28. **With respect to claim 52:** Mault teaches software executing on the weight control program computer operable to alter the meal plan based upon food selections received from the user computer, which food selections received from the user computer are based upon the data relating to foods stored on the favorites database transmitted by the software. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

29. **Claims 44 and 48** are rejected under 35 U.S.C. 103(a) as being
unpatentable over **Mault** in view of **Grana** and further in view of **Nanci Hellmich**,
"Thinning Out The Diet Myths" USA Today, Jan. 3, 2001 (hereinafter "**Hellmich**").

30. **With respect to claim 44:** Mault/ Grana disclose the limitations in the
rejections cited above. Mault/Grana do not disclose, however Hellmich teaches
the activities which are favorites of the person are specified by the person. (page
3, 6th full paragraph – overweight children are encouraged to choose a favorite
activity)

Therefore, it would have be obvious to one of ordinary skill in the art at the
time of the invention to have the user specify activities which are their favorites
because of the motivation to encourage the user to want to work out.

31. **With respect to claim 48:** Mault/ Grana disclose the limitations in the
rejections cited above. Mault/Grana do not disclose, however Hellmich the foods
and activities which are favorites of the person are specified by the person (page
3, 6th, 13th and 14th full paragraphs – overweight children are encouraged to
choose a favorite activity; dieters are encouraged to eat favorite foods while on
diet).

Therefore, it would have be obvious to one of ordinary skill in the art at the
time of the invention to have the user specify the food and activities which are
their favorites because of the motivation to encourage the user to want to work
out and not binge on the foods if they are forbidden. (Hellmich: page 3, 14th full
paragraph)

CONCLUSION

32.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831.   The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. R./
Examiner, Art Unit 3689

/Janice A. Mooneyham/
Supervisory Patent Examiner, Art Unit 3689